

EXECUTIVE BRANCH OF THE APSÁALOOKE NATION

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TESTIMONY FROM THE APSÁALOOKE (CROW) NATION ON THE PROPOSED RULES FOR CLASS II DEFINITIONS AND CLASSIFICATION STANDARDS PRESENTED TO THE NATIONAL INDIAN GAMING COMMISSION

**BY SCOTT RUSSELL
ACE BOARD CHAIRMAN**

NOVEMBER 2, 2006

**HOLIDAY INN GRAND MONTANA
BILLINGS, MONTANA**

Good morning, Mr. Chairman and Commission Members. My name is Scott Russell and I serve as an Executive Assistant to Chairman Carl Venne of the Crow Tribe in the area of gaming. I am also the Apsáalooke Casino Board chairman.

Thank you for coming to the State of Montana to consult with tribal leaders. We have asked for this meeting and we hope that today you will come to better understand our situation and why we oppose regulations that would restrict Class II gaming. It is easy for us to be overlooked because we are in Region IV, the North Central Region, with its headquarters in St. Paul. We share the same region as the Dakotas, and even Michigan. The recent casino success of Michigan Indian tribes helps to paint a picture of Indian gaming that is far, far different than what we face here in Montana.

In the recent past, Indian gaming has had to defend against several especially vicious attacks that would frustrate development and jeopardize self-sufficiency. The proposed federal legislation to close supposed loopholes that allow for so-called "reservation shopping" generated a great deal of disinformation. We hope there is no further action on S. 2078, sponsored by Senator John McCain, and HR. 4893, sponsored by Representative Richard Pombo. We strongly oppose both measures.

The main subjects of this week's consultations, and especially important for the many tribes that have come to rely on Class II casinos, are the proposed regulations on Class II games: last spring's proposed rules on 25 CFR Part 502, *Definition for Electronic or Electromechanical Facsimile*, 25 CFR Parts 502 and 546, *Classification Standards; Class II Gaming: Bingo, lotto, et al*; and August's proposed rule 25 CFR Part 547, *Technical Standards for "Electronic, Computer, or Other Technologic Aids" Used in the Play of Class II Games*.

The "clarification" of regulations about bingo and the arbitrary distinctions between aids and facsimiles are serious attacks on tribal gaming and tribal sovereignty. In statements earlier this year, two Montana tribes (The Confederated Salish and Kootenai Tribes of the Flathead Nation and the Chippewa Cree Tribe from Rocky Boy) objected in detail to the proposed Class II regulations and we share their objections.

As you well know, the proposed regulations would limit Class II gaming by placing rigid and arbitrary restrictions on the definition of "bingo," eviscerating that part of the industry that relies on technology to enhance the bingo experience. The rules would unreasonably narrow the statutory definitions of bingo to reclassify Class II electronic bingo games as prohibited "facsimiles" or place so many additional rules on the games that they would be unplayable: for example, requiring two seconds between each number picked in a bingo game or requiring the on-screen bingo card to take up an unreasonably large section of the display. We recommend that you reject these regulatory changes.

We feel that the new regulations further diminish our authority by failing to respect our Tribal Gaming Commissions, giving more control to gaming labs that might not be impartial.

We are concerned also about the recent Colorado River Indian Tribes case and the implication it has for our casino and future development. The case says that the NIGC does not have statutory authority to regulate Class III games; Class III games are for tribal and state governments to control and should be governed by their internal control standards. This ruling should make for a more streamlined regulatory framework. However, we are anxious to hear NIGC's response to the ruling and its applicability. Also, we are concerned about whether or not this ruling will have any effect on the remedy for states not bargaining in good faith on Class III compacts.

A Montana state legislator represented in comments to you in September of this year that Class II gaming was creating a dangerous and unwanted Vegas-style environment and needed to be stopped. We question whether the presentation was appropriate given that the legislator is the Chairman of the Montana Gaming Advisory Council, an administrative body. The presenter raised the specter of frightening "wide open" gaming based on one casino that opened roughly at the same time of his complaint. Despite his assertions, it's by no means clear that Montana citizens and visitors would not welcome Indian casinos of the type found in other states; however, we are unable to afford to conduct an effective referendum on this matter.

The representative's comments are especially ironic given that Montana makes millions of dollars a year in video gaming taxes. At the edge of our reservation is the border town of Hardin, with a population of under 3,500 people, a little over one third of whom are Indians, mostly Crow tribal members. In 2006, the State of

Montana earned over \$100,000 a quarter in video gaming taxes from Hardin, about half a million dollars for the year. A small portion of our reservation is in Yellowstone County very near Billings. In Yellowstone County, primarily from the city of Billings itself, the State of Montana took over two and a half million dollars in video gaming taxes each quarter of 2006, over ten and three-quarter million dollars for the year. Montana clearly has a very significant gaming industry from which, for the most part, tribes are excluded. The dollars raised by licensing and other gaming fees are incidental. Almost all of the gaming taxes go into the state general fund, and very little is provided to tribal citizens in services.

Montana's tavern casinos also offer jobs and secondary economic impacts that are unavailable on the reservations. A recent Economic Development Reservation Assessment prepared by RJS & Associates under commission from the State Tribal Economic Development Commission found that Montana's Indian reservations still average 65% unemployment, and that 90% of survey respondents reported that even their paychecks earned on reservation had to be spent off the reservation. The study found that Indian reservations contribute in this way over two billion dollars to the state economy, yet very little of that money remains on the reservation to increase development and services available there.

To support a general atmosphere of video poker and keno in tavern casinos yet howl in outrage at the suggestion of additional Indian gaming is incredible. Montana is a regular contender for most video gaming machines per person of all the states and most Gambler's Anonymous meetings. Montana's programs for problem gambling are minimal, yet any suggestions of expansion of Indian gaming raise great cries about the public policy dangers of gaming. Alcohol licenses are actually required for state casinos, but our compact carries the strong suggestion that if we were to sell alcohol (Crow is a dry reservation), the state would license other casinos on fee lands actually within our reservation. Any litigation to try to defend our Indian lands would be extremely costly.

The profiteers from Montana video gaming are primarily local tavern owners and game suppliers who have managed to effectively capture the legislative and administrative mechanisms. By law, three industry representatives sit on the Gaming Advisory Council and only one tribal representative. Montana limits individual casinos/taverns to twenty poker and keno machines, but one franchise operation owns more machines than all of the tribes in Montana. At several locations in Billings, you will find casinos with separate buildings but the same owners, raising significant questions about how limited gaming really is.

In its compact with the State of Montana, the Crow Tribe is allowed one hundred Class III machines but only one facility, its casino roughly an hour from either Sheridan or Billings and with no lodging available. We cannot support such facilities as a hotel and restaurant with a hundred machines. Consider that the Reservation is over two million acres and that I-90 runs through it, and also that the Little Bighorn Battlefield, a very popular tourist destination, is actually on the Crow Reservation. A larger Indian casino of the type found in other states would not draw the business from the tavern casinos, but would provide additional revenue for the state as well as the tribe.

Clearly the expansion of gaming at Crow would be beneficial in providing more income for meeting vital governmental and social needs. As the federal government stalls on supporting Indian Health Services, we have particular needs in that area.

We have some class II machines, but have been wary of further Class II expansion in an atmosphere of uncertainty and even hostility. The State has expressed an unwillingness to negotiate further on Class III gaming despite the clear inequities in state licensing. Recently, the State has even suggested that it wants to "negotiate" Class II gaming, which is for Montana tribes a somewhat inappropriate and even frightening prospect. Against this background, the goals of IGRA to help support tribal sovereignty through Indian gaming are severely frustrated.

The NIGC should not be formulating or supporting regulations that cripple IGRA. We ask for your help in protecting Class II gaming, in developing Indian gaming in general (for example, in further developing Class I gaming or reclassifying such games as blackjack), and also in educating the public as to the goals and realities of Indian gaming, in order to fight well-funded and misleading campaigns from opponents. We need your help in developing stronger gaming programs consistent with the goals of IGRA and federal policy to strengthen the federally recognized sovereignty of Indian tribes by promoting tribal economic development, tribal self-sufficiency, and strong tribal governance and self-determination over internal affairs.

Thank you for your attention today.

**SUPPORTING DOCUMENTS
TESTIMONY FROM THE APSAALOOKE (CROW) NATION
PRESENTED TO THE NATIONAL INDIAN GAMING COMMISSION
NOVEMBER 2, 2006**

Sandholm, Deanne

From: Huntington, Gene
Sent: Monday, March 13, 2006 11:50 AM
To: Erickson, Connie
Cc: Horn, Fong; Sandholm, Deanne
Subject: Numbers of State and Tribal Gaming Machines

In response to the question this morning, I believe this is the information Senator Pease asked for.

The number of machines licensed by the state changes from day to day but we generally use the number of 18,000.

In terms of Tribal machines, we have no direct information other than from the Salish Kootenai. However Native American Casino Magazine publishes an annual directory and using their numbers and the numbers from the Salish Kootenai, I would make the following estimate of tribally operated and licensed class III machines:

Salish Kootenai	185
N. Cheyenne	100
Crow	100
Rocky Boy	59
Fort Peck	<u>130</u>
Total	574

If the committee wants a more precise count on Tribal machines, I would be happy to contact the Tribes.

Gene Huntington, Administrator
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STATE-TRIBAL RELATIONS INTERIM COMMITTEE
 MARCH 13, 2006 MEETING
 EXHIBIT 5

3/13/2006

Appendix C

Chart 2

Distribution of Gambling Revenue for Fiscal Year 2004

REVENUE SOURCE	TOTAL COLLECTED	LOCAL GOVT.	GCD	GENERAL FUND
VGM GROSS INCOME TAX	\$50,074,435	\$0	\$50,074,435	
VGM PERMIT SURCHARGE	\$273,275	\$0	\$273,275	
LIVE BINGO & KENO TAX	\$18,769	\$18,769	\$0	\$0
SPORTS TAB TAX	\$727	\$0	\$727	\$0
VGM PERMIT FEES	\$4,146,438	\$1,880,800	\$2,265,638	\$0
FINES/PENALTIES	\$142,363	\$71,182	\$0	\$71,181
LAB TEST FEES	\$74,606	\$0	\$74,606	\$0
BINGO & KENO PERMIT FEES	\$12,625	\$0	\$12,625	\$0
CARD TABLE PERMIT FEES	\$66,500	\$41,100	\$25,400	\$0
CASINO NIGHT PERMIT FEES	\$575	\$0	\$575	\$0
ANTIQUE SLOT DEALER	\$0	\$0	\$0	\$0
OPERATOR LICENSE FEES	\$119,031	\$0	\$119,031	\$0
CARD DEALER LICENSE FEES	\$18,496	\$0	\$18,496	\$0
CARD ROOM CONTRACTOR FEES	\$4,800	\$0	\$4,800	\$0
CARD TOURNAMENT FEES	\$1,360	\$0	\$1,360	\$0
MANUFACTURER LICENSE FEES	\$112,259	\$0	\$112,259	\$0
TOTALS	\$55,066,259	\$2,011,851	\$2,635,517	\$50,418,891
PERCENT OF TOTAL	100.00%	3.65%	4.79%	91.56%

